

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiffs,

v.

DARWIN STEWART,

Defendant.

**8:16CR150**

**ORDER**

Defendant Darwin Stewart (“Stewart”) has filed a pro se motion for compassionate release (Filing No. 103) pursuant to 18 U.S.C. § 3582(c)(1)(A). He also requests counsel to assist him with this matter.

Section 3582(c)(1)(A) permits Stewart to move the Court to “reduce [his] term of imprisonment” for “extraordinary and compelling reasons.” *Id.* § 3582(c)(1)(A)(i). But Stewart can only file such a motion *after* he “has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons [“BOP”] to bring a motion on [his] behalf or the lapse of 30 days from the receipt of such a request by the warden of [his] facility, whichever is earlier.” *Id.*; *see also United States v. Raia*, 954 F.3d 594, 595 (3d Cir. 2020) (denying a defendant’s motion under § 3582(c)(1)(A) because he did not give the BOP thirty days to respond to his request for compassionate release).

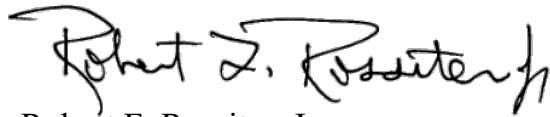
Stewart’s motion says nothing about whether he has taken any steps to exhaust his administrative remedies or otherwise comply with § 3582(c)(1)(A). Although the Court fully understands Stewart’s concerns about the risks posed by COVID-19, the Court agrees with the Third Circuit that a defendant’s failure to comply with the statutory prerequisites under § 3582(c)(1)(A) before asking for a reduction “presents a glaring roadblock foreclosing compassionate release at this point.” *Raia*, 954 F.3d at 597 (noting “the risks that COVID-19 poses in the federal prison system,” but finding strict statutory compliance

necessary, particularly given the “BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread”). Accordingly, Stewart’s motion for compassionate release and request for counsel are denied without prejudice to refiling after either of the statutory requirements is met.

IT IS SO ORDERED.

Dated this 22nd day of May 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.  
United States District Judge